

AO 91 (Rev. 5/85) Criminal Complaint

United States District Court  
NORTHERN DISTRICT OF CALIFORNIA

2007 JUL 11 PM 2:08

UNITED STATES OF AMERICA

V.  
ALFONSO GUTIERREZ

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA., S.J.

CRIMINAL COMPLAINT

CASE NUMBER:

07 70411

RS

E-FILING

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about February 8, 2007 in Monterey county, in the

Northern District of California defendant(s) did, (Track Statutory Language of Offense)

knowingly receive and possess a firearm (to wit, a Remington model 870 12 gauge shotgun, serial number 333514V, with a 12 3/4 inch barrel, and a Remington model 1100 12 gauge shotgun, serial number N915950V, with a 10 1/2 inch barrel) made in violation of the provisions of Title 26 of the United States Code; and receive and possess such firearms which were not registered to him in the National Firearms Registration and Transfer Record.

in violation of Title 26 United States Code, Section(s) 5861(c) and (d)

I further state that I am a(n) Special Agent-ATF and that this complaint is based on the following  
Official Title

facts:

See Attached Affidavit

Maximum Penalties:

10 years imprisonment  
\$10,000 fine  
3 years supervised release  
\$100 mandatory assessment

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

Approved  
As To  
Form:

AUSA: BENJAMIN KENNEDY

Name/Signature of Complainant:

Sworn to before me and subscribed in my presence,

Date

7/11/07

at

San Jose, California

City and State

U.S. Magistrate Judge Richard Seeborg

Name & Title of Judicial Officer

Signature of Judicial Officer

**I. AGENT BACKGROUND**

1. I, Micah Wellman, being first duly sworn and under the penalty of perjury, state to the best of my knowledge, as follows:
  - A. I am a Special Agent with the Bureau of Alcohol, Tobacco and Firearms (ATF) and have been so employed since April 1999. I have completed the following training at the Federal Law Enforcement training Center, Glynco, Georgia: Criminal Investigation School (10 weeks), ATF New Agent Training (16 weeks), US Customs Inspector Academy (10 weeks) and Inspector General Academy (3 Weeks). I have also completed the Sacramento, CA Sheriff's Office Police Academy (26) weeks. I possess a Bachelor of Arts in Criminal Justice from the University of Nevada, Reno (1992). I have conducted numerous investigations pertaining to violations of federal and state explosives, firearms and narcotics laws.
  - B. I know for the purposes of Chapter 53 United States Code, a firearm is defined in Title 26 United States Code Section 5845(a) and this definition includes a shotgun having a barrel or barrels of less than 18 inches in length.
  - C. I know that for the purposes of Chapter 53, the Secretary of the Treasury shall maintain a central registry of all firearms in the United States that are not in the possession or under the control of the United States. This central registry is known as the National Firearms Registration and Transfer Record. The central registry shall include the identification of the firearm, date of registration and the identification and address of person entitled to possession of the firearm.
  - D. I know that as per Title 26 United States Code Section 5841(b) each licensed manufacturer, importer, and maker shall register each firearm he/she manufactures, imports, or makes. Also, a firearm transferred shall be registered to the transferee by the transferor.
  - E. I know that it is a violation of Title 26, United States Code, Section 5861(c) to receive or possess a firearm made in violation of the provisions of this chapter and a violation of Title 26, United States Code, Section 5861(d) to receive or possess a firearm which is not registered to the individual in the National Firearms Registration and Transfer Record.
  - F. I make this affidavit in support of an arrest warrant for Alfonso Gutierrez, date of birth 12/05/86, for a violations of 26, United States Code, Sections 5861(c) and (d).
  - G. The information contained in this affidavit is based upon information provided to me by ATF, ATF Special Agents, Officers of the Salinas Police Department (SPD) as well as my own personal investigation. Because this affidavit is for the purpose of setting forth probable cause, I have not included every fact known to me or developed through this investigation.

**II. FACTS SUPPORTING PROBABLE CAUSE**

1. On 01/23/07, a drive-by shooting occurred at 720 St. Michael Way, Salinas, CA. Three bullets struck a victim's vehicle but there were no injuries. At the time of the shooting, the vehicle was occupied by two individuals. Victim 1 (V1) followed the suspect's vehicle, a

1998 Chevrolet Malibu bearing California license plate 5LSP157 containing three males, and contacted the Salinas Police Department (SPD). The vehicle later crashed into a utility pole near 793 Elkington Street, Salinas, CA. The three males exited the vehicle and fled. SPD later determined that two of the suspects were inside a residence located at 1314 Palmera Drive, Salinas, CA. Officers subsequently arrested Augustin Gutierrez and Ramon Cardenas after they exited 1314 Palmera Drive, Salinas, CA.

2. SPD Detective Jackie Bohn reviewed SPD records for individuals and addresses related to the 1998 Chevrolet Malibu involved in this incident. Detective Bohn cross referenced this information to SPD records related to Augustin Gutierrez. Detective Bohn observed that Augustin Gutierrez had associated with Alfonso Gutierrez and that Alfonso Gutierrez lived near 1314 Palmera Drive. Detective Bohn believed that Alfonso Gutierrez may have some involvement in the shooting. On 01/23/07, a photo line-up was conducted in which V1 identified Alfonso Gutierrez as the driver of the 1998 Chevrolet Malibu.
3. SPD records indicated that Alfonso Gutierrez resided at 1055 Paseo Grande #11, Salinas, CA. On 02/08/07, the SPD served a search warrant at the residence of Alfonso Gutierrez, 1055 Paseo Grande #11, Salinas, CA. During the execution of the search warrant, Alfonso Gutierrez's mother, Monica Gutierrez, and sister, Monica Gutierrez, identified a room within the residence as being Alfonso Gutierrez's bedroom. In Alfonso Gutierrez's bedroom, officers recovered two short-barreled shotguns, three rounds of Remington 12 gauge shotgun ammunition, gang-related clothing and indicia. The two recovered firearms are described as a Remington model 870 12 gauge shotgun, serial number 333514V, and a Remington model 1100 12 gauge shotgun, serial number N915950V. The SPD examined the firearms for fingerprints but did not recover any fingerprints on the firearms.
4. I know that 1055 Paseo Grande #11, Salinas, CA is located within the Northern District of California.
5. On 07/03/07, I examined a Remington model 1100 12 gauge shotgun, serial number N915950V, and noted that the barrel length was approximately 10 ½ inches in length. Also, I examined a Remington model 870 12 gauge shotgun, serial number 333514V, and noted that the barrel length was approximately 12 ¾ inches in length.
6. On 07/05/07, ATF queried the National Firearms and Transfer Record and determined that neither the Remington model 1100 12 gauge shotgun, serial number N915950V, nor the Remington model 870 12 gauge shotgun, serial number 333514V, appeared in the central registry. Additionally, Alfonso Gutierrez, date of birth 12/05/86, did not appear in the central registry.

### **III. CONCLUSION**

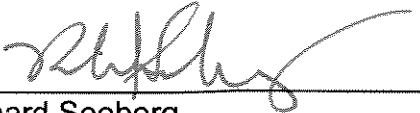
1. Based on the foregoing, I respectfully submit that probable cause exists to believe that Alfonso Gutierrez, date of birth 12/05/86, has violated the following federal offenses: (1) Title 26, United States Code, Section 5861(c), to receive or possess a firearm made in violation of the provisions of this chapter; and (2) Title 26, United States Code, Section

5861(d), to receive or possess a firearm which is not registered to the individual in the National Firearms Registration and Transfer Record. Therefore, I request that a criminal complaint and no bail arrest warrant to be issued for Alfonso Gutierrez for said offenses.



Micah Wellman  
Special Agent,  
Alcohol, Tobacco & Firearms Bureau

Sworn to and subscribed before me  
on this 11<sup>th</sup> day of July 2007



Richard Seeborg  
United States Magistrate Judge